



New Bedford Police Department

Central Records Bureau

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December 14, 2018

Curtis Waltman
MuckRock News
DEPT MR 64571
411A Highland Ave
Somerville, MA 02144-2516

Sent via email to: 64571-61661621@requests.muckrock.com

Re: Public Records Request re Policies on Taser deployment and data on the deployment

Dear Curtis:

I write in response to your email requesting records pursuant to M.G.L. c. 66, section 10 (the "Public Records Law") received by the New Bedford Police Department on December 3, 2018.

You requested, "All policies regarding Taser deployment. All policies regarding the keeping of statistics and data concerning the deployment and use of Tasers. Any relevant reports (after-action, etc) regarding the individual cases that a Massachusetts State Police officer used a taser. All data kept on the deployment of tasers within the department. This includes any data on how many are used, which divisions receive them, what circumstances require tasers, and how often they are used".

New Bedford Police Department General Order 12-0, Electronic Control Weapons is the responsive record in the Department's possession to your requests for policies "regarding Taser deployment and use of Tasers" and to your request for policies "regarding the keeping of statistics and data concerning the deployment and use of Tasers." A copy of the General Order 12-0, Electronic Control Weapons is provided herewith.

With respect to the third category of your request for "reports regarding the individual cases that a Massachusetts State Police officer used a taser" the Department does not have any responsive records in its possession.

The final category of your request for "*all data kept on the deployment of tasers*" to include "*any data on how many are used, which divisions receive them, what circumstances require tasers, and how often they are used,*" is a broad request for information and is not a request for a record. The Department does not have a database it may query to provide the information you have requested. To the extent your request for "all data" regarding tasers could be interpreted as a request for the Department's semiannual reports to the MA Executive Office of Public Safety & Security, the Department declines to produce these reports pursuant to exemption (n) to the Public Records Law. The Department has completed the semiannual Electronic Control Weapons Use Reports in compliance with M.G.L. ch.170 sec. 2 of the Acts of 2004 since 2012. The reports are made directly to the state law enforcement agency charged with receiving them and contain details about the size of the Department's inventory of weapons, weapons deployed, including their serial numbers as well as information about the training that sworn officers have received. The records are reports made by one law enforcement agency to another and are not available by other means. The Department believes that the disclosure of its electronic control weapons reports to EOPPS would likely jeopardize public safety.

In deciding whether to withhold information, we were guided by the two-prong test for exemption (n) articulated by the Massachusetts Supreme Judicial Court in People for the Ethical Treatment of Animals (PETA) v. Dep't of Agric. Res., 477 Mass. 280 (2017). The first prong examines "whether, and to what degree, the record sought resembles the records listed as examples in the statute"; specifically, the "inquiry is whether, and to what degree, the record is one a terrorist 'would find useful to maximize damage.'" Id. at 289-90. The second prong examines "the factual and contextual support for the proposition that disclosure of the record is 'likely to jeopardize public safety.'" Id. There is an inverse correlation between the prongs. Id. at 290. Where there is "a strong resemblance between the records sought and the types of records listed in the statute," the custodian's burden under the second prong is "at its lowest." Id.

Disclosure of the Department's reports which include details about its weapons inventory, weapons' serial numbers and the extent to which its officers are armed and trained would be useful to a terrorist in maximizing damage. Disclosure would give a terrorist information about the number and type of weapons that officers have access to, thereby enabling a terrorist to arm himself with more or better weaponry. The release of the Department's weapons inventory and the technical specifications and capacity of the weapons it does and does not possess would provide a terrorist with information to more effectively resist police intervention in dangerous situations. Dissemination of the requested information regarding weapons would therefore jeopardize public safety by making it more difficult for the police to deal with threats to the public. Withholding the requested information is designed to prevent individuals with devious motives from ascertaining the degree to which individual officers and the Department as a whole is prepared to address a particular threat.

Your intention to publish the Department's weapons inventory on a public news/media website only increases the chances that its dissemination would jeopardize public safety.

You have the right to appeal this determination to the Supervisor of Records under 950 CMR 32.081(1) within 90 calendar days of this response. Any appeal shall be in writing and include a copy of your original request and this letter. By law, the Supervisor is required to respond within

10 business days of receipt of your appeal. You may also seek judicial review of an unfavorable response by commencing a civil action in the superior court under G.L. c. 66, section 10A(c).

Respectfully submitted,

Officer Annemarie P. LeFever
New Bedford Police Department
Records Access Officer